IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,

JAIPUR BENCH, JAIPUR.

S. B. Misc. Appeal No. 1407/2005

Sunder Vs. Ramsahai.

Date of Judgment: October, 2006

HON'BLE MR. JUSTICE R. S. CHAUHAN

Mr. G. K. Garg for the Appellant
Mr. Bipin Gupta for the Respondent.

(Per Court):

Like boxers in a ring, this is the fifth round of boxing between the landlord and the tenant. The fight is continuing not because of the fighters themselves, but because the trial court has failed to follow the directions issued by the first appellate court and by this court. Needlessly, the litigant are suffering the endless judicial voyage for the last thirty-five years. The landlord is still hoping for getting the tenant vacated from his premises; the tenant is enjoying the fruits of judicial lethargy. This fight must end now.

Way back in 1971, the landlord, the respondent

before this court, had filed a suit for eviction on the grounds of bona fide necessity, nuisance, change of user, and default in the payment of rent. However, the trial court dismissed the said suit vide its order dated 2-12-1974. Therefore, the landlord filed an appeal before the first appellate court. Along with the appeal, he also filed an application under Order 6, Rule 17 of the Civil Procedure Code (henceforth to be referred to as 'the Code', for short). The landlord pleaded that he should be permitted to amend the suit and to state that the tenant had already taken the benefit of the first default. Therefore, the benefit of the second default cannot be taken by the tenant. The landlord also filed an application under Order 41, Rule 27 of the Code, for bringing the document on record showing that in an earlier suit, the tenant had taken benefit of the first default. Vide Order dated 22-8-1978, the learned appellate court dismissed the application under Order 6, Rule 17 of the Code and held that the question of second default and benefit of Section 13 (6) of the Rajasthan Premises (Control of Rent

and Eviction) Act, 1950 (henceforth to be referred to as 'the Rent Control Act', for short) could be considered without any amendment. However, it did allow the application under Order 41, Rule 27 of the Code and took the documents, namely Orders dated 27-10-65 and 30-11-65 showing the first default by the tenant. Further, vide Order dated 27-2-1980, the landlord's appeal was allowed and the case was remanded back to the trial court. The first appellate court directed the trial court to frame an issue about the comparative hardship of the parties.

However, after remand, the landlord again filed an application for making the amendment with respect to the second default. The learned trial court allowed the amendment and also framed an issue, issue No. 7 (a) about “whether the respondent has defaulted in payment for the second time or not? If yes, then its effect?”

Since the tenant was aggrieved by the trial court's order, he filed a Revision petition

before this court. Vide Order dated 23-2-83, this court allowed the revision petition and disallowed the amendment. But, it did direct the trial court to decide the case in terms of the Order dated 22-8-1978 and to consider the question of second default and about the non-applicability of Section 13 (6) of the Rent Control Act. Consequently, vide Order 15-12-83, the trial court deleted the amendment in the plaint, but kept the issue of second default on record. Vide order dated 9.2.87 the learned trial court dismissed the suit filed by the landlord. While dealing with the issue of second default, the learned trial court ultimately held that this issue need not be answered. The stand taken by the trial court was clearly in violation of the direction issued by the first appellate court and by this court. Therefore, the landlord again filed an appeal before the first appellate court. Although, the appeal was filed in the year 1987, it was finally decided after lapse of 18 years vide order dated 3.3.05. Even after 18 years the first appellate court has remanded the case back to the trial court for deciding the

issue of second default and to decide non-applicability of Section 13(6) of the Rent Control Act. Since the tenant is aggrieved by the said order, he has filed the present appeal before this Court.

Mr. Gopal Garg, the learned counsel for the appellant, has vehemently argued that the direction issued by the first appellate court and by this court to the trial court were that the trial court shall decide whether the tenant had defaulted in payment of rent for second time and whether sub-section 4 of Section 13 of the Rent Control Act was to be applied or not. According to the learned counsel the said issue has been decided by the trial court. Since the issue has been decided by the trial court, there was no reason for the first appellate court to remand the case. Moreover, the power to remand the case is the vast power, therefore, it should be used sparingly. Instead of invoking its power under Order 41 Rule 24, the learned Judge has remanded the case back to the trial court. Hence, the

learned Judge has failed to exercise a power vested in him. Thus, the impugned order deserves to be set aside.

On the other hand Mr. Bipin Gupta, the learned counsel for the respondent, has argued that instead of deciding the issue with regard to the second default, the learned trial court has circumvented the entire issue. Therefore, the learned Judge has correctly held that the issue has not been decided by the trial court. Furthermore, according to the learned counsel evidence had to be taken about the said issue which can only be done the best by the trial court. Therefore, he has supported the impugned order.

We have heard both the learned counsels and have perused the impugned order.

A bare perusal of the order dated 9.2.87, a copy of which was placed before this Court, clearly reveals that the learned trial court has

concluded that there was no specific direction issued by the first appellate court vide order dated 22.8.78 to consider the issue of second default. It has then proceeded to wonder whether the said issue could be considered suo moto by the Court. While considering this issue the learned trial court has concluded that since application for amending the plaint was disallowed by the first appellate court and also by this court subsequently, the evidence produced by the plaintiff cannot be considered. Moreover, according to the learned trial court once the amendment has been disallowed by this Court, the very issue stands deleted. Thus, the trial court has held that it need not decide the issue of second default.

A bare perusal of the order dated 22.8.78 clearly reveals that the first appellate court had clearly directed that the order dated 27.10.65 and 13.11.65 should be taken on record. Moreover, vide order dated 23.2.83 this court had clearly held “that it would be open to the landlord-plaintiff

to show to the trial court that the defendant-tenant cannot take benefit of Section 13(4) of the Act and similarly it would be open to the defendant-tenant to show that he can take benefit of Section 13(4) of the Act depending upon the facts and circumstances of the case which are on record." It had further held "it is made clear that even though the amendment has been disallowed but the trial court would in accordance of the order dated 22.8.79 passed by the Additional Civil Judge, Bharatpur in the appeal consider the objection of the landlord in respect of alleged non-applicability of Section 13(4) of the Act." Thus a clear direction was issued by this Court to consider the issue of second default and to examine the non-applicability of Section 13(4) of the Rent Control Act. Undoubtedly, in case the appellant-tenant had defaulted previously in paying the rent, the fact was crucial for decision of the suit filed by the landlord for eviction of the tenant. Since the order dated 29.10.65 and 30.11.65 were already on record, it was essential for the trial court to examine the issue of second

default and to consider the non-applicability of Section 13(4) of the Act. After all, in case the tenant has defaulted the second time, he could not save himself from eviction. Once an unequivocal direction has been given by this Court, there was no reason for the learned trial court to circumvent the issue. It is rather surprising that the learned trial court has ignored the directions of this Court. Because of the omission committed by the trial court, the dispute continues to exist even after a lapse of thirty-five years. This is really a sorry state of affairs where the litigant continues to suffer because of the violation of the direction issued by this Court.

Section 107 and Order 41, Rules 23 to 26-A of the Code clearly demarcate the power of remand granted to the appellate court. Furthermore, Order 41, Rules 27, 28 and 29 grant ample power to the appellate court to take additional evidence. Considering the fact that the order dated 27.10.65 and 30.11.65 were readily available on record, the learned Judge should have invoked its power under

Order 41 Rule 24. Apparently, the evidence on the record was sufficient to enable the appellate court to pronounce the judgment. Thus, there was no reason for the learned Judge to remand the case back to the trial court. Recently, in the case of Niranjan Lal Vs. U.I.T., Alwar & Ors. (SB Civil Misc. Appeal No. 1253/1998 decided on 21.8.2006) this Court has held as under:-

> *A bare perusal of Rules 24 and 25 of the Code clearly reveals that the appellate court should endeavor to decide the case at the appellate stage itself. However, in rare cases for just decisions of the case, it may remand the case back to the trial court for recording of evidence on particular issue framed by it. But such recording should be done within the time frame fixed by the appellate court. Moreover, the evidence so recorded should be sent back to the appellate court for the final decision of the appeal.*
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> *The purpose behind the Rules is not to initiate de novo trial. The purpose is also not to prolong the dispute between the parties. Since the Judiciary must endeavor to decide the dispute as soon as possible, the appellate court is expected to decide the case at the appellate stage itself. Therefore, the tendency to remand the case in toto after setting aside the judgment of the trial court and the tendency to direct a de novo trial is against the tenor of law. The appellate court is expected to exercise its power within the confines to Rules 23 to 26-A of the Code. Ample powers have been given to the appellate court under Rules 27, 28 and 29 of the Code to*

take additional evidence and to decide the issues re-framed by it. Since the trial courts are the most overburdened Courts in the judicial hierarchy, the appellate court should refrain from remanding the case in toto in a routine manner. What can be done at the appellate stage, need not be remanded back to the trial courts. After all, the buck has to stop somewhere.

The poor litigant cannot be treated as a shuttlecock and forced to run from pillar to post, from court to court. The litigant expects the judiciary to decide its case at the earliest. The litigant neither has the financial means, nor the energy to go on a roller-coaster ride of litigations. The judiciary has to be sensitive to the financial condition and to the expectation of the litigant. To prolong a dispute endlessly is not only a disservice to the litigant, but it is also an injustice to him. Therefore, this trend of remanding the case back to the trial court in a mechanical and routine manner has to stop. The learned District Judges, who are experienced and knowledgeable, are expected to do their duty by the litigant.

In the case of **Bechan Pandy and Others v Dulhin Janki Devi and Others, (AIR 1976 SC 866)**, the Hon'ble Supreme Court had held as under:-

To remand a suit to the trial court would necessarily have the effect of keeping alive the strife between the parties and prolonging this long drawn litigation by another round of legal battle in the trial court and thereafter in appeal. It is time, that the final curtain is drawn and the long meandering course of litigation between the parties is put an end to. The Courts should be loath to entertain a

plea, which would have the effect of condemning succeeding generation of families to spend major part of their lives in the protracted litigation.

Therefore, in the present case considering the fact that the parties have been battling it out for the last three and a half decades, considering the fact that sufficient evidence existed on the record itself, the appellate court should have decided the case itself, rather than remanding it back to the trial court.

In the result, we quash and set aside the order dated 3.3.05 and direct the learned Judge to call for the record from the trial court and to decide the case with regard to the issue whether the tenant has committed a second default of payment and if yes then its effect on the case. The said issue shall be decided by the learned Judge within a period of two months from the date of receipt of the certified copy of this judgment. Of course, the learned Judge is free to take additional evidence under Order 41 Rule 27 of the Code, if necessary. But, in case additional

evidence needs to be recorded then it should be done on day-to-day basis. The parties are directed to cooperate with the court in deciding the case at the earliest within the time frame given above. With these directions this appeal is allowed.

(R.S. CHAUHAN) J.